HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No 115 /06 (S/S)

Virendra Raj

Vs.

State of Uttaranchal and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 14.02.06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 115 (SS) OF 2006

Virendra Raj, S/o Sri Chunni Lal,
At present posted as Nayab Tehsildar,
Tehsil Dehradun, District Dehradun. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary.
   Revenue Department Dehradun, District – Dehradun.
2. Chief Revenue Commissioner, Uttaranchal Dehradun, District Dehradun.
3. Commissioner, Garhwal Division Pauri, District- Pauri Garhwal.
4. District Magistrate Dehradun, District Dehradun.
5. Additional District Magistrate (Administration), Dehradun, District Dehradun. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Rakesh Thapliyal, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to consider the candidature of the petitioner for regular promotion on the post of Nayab Tehsildar as being a reserved category candidate within a specified period. Petitioner has further prayed for a writ of mandamus directing the respondents that while granting regular promotion the period of ad hoc promotion may also be treated while making a regular promotion and all consequential benefits may also be given to the petitioner in respect of the post of Nayab Tehsildar.

Brief facts giving rise to the present writ petition are that initially the petitioner was appointed as a Seasonal Collection Amin from 27th July 1984 to 15.01.1985 and thereafter he was appointed on 1st May, 1989 as a Seasonal Collection Amin.

Thereafter taking into consideration the performance of the petitioner as Seasonal Collection Amin, the services of the petitioner have been regularized on the post of Collection Amin by order dated 27th June, 1990.

It is admitted that the petitioner falls under the zone of consideration in accordance with Rules 5 and 17 of the rules framed under U.P. Subordinate Revenue Executive Service (Nayab Tehsildar) Rules, 1944 and he has approached the Uttaranchal S.C. and S.T. Commission by way of a representation and consequently the Commission instructed to the Commissioner Garhwal Mandal to take a positive action for promotion of the petitioner to the post of Nayab Tehsildar. Consequently in pursuance of the direction of the Commission, the Commissioner Garhwal Mandal after implementation of the roster of reservation on promotion sough some clarification from the District Magistrate Dehradun and subsequently passed an order on 8th January, 2005 whereby the petitioner was granted ad hoc promotion on the post of Nayab Tehsildar for 89 days against a substantive vacancy subject to this condition that on the availability of regular incumbent the petitioner will be reverted back.

Thereafter the Commissioner Garhwal Mandal on 08.01.2005 passed an order granting ad hoc promotion to the petitioner as being a Scheduled Caste candidate on the post of Nayab Tehsildar for 89 days or till the regular selection is made.

In pursuance of the aforesaid order, the petitioenr took over the charge on the post of Nayab Tehsildar on 1st February, 2005 and subsequently by an order dated 12.04.2005, the

petitioner was transferred to Tehsil Kalsi, where the petitioner reported his joining on 15.04.2005.

The petitioner further continued as Nayab Tehsildar as ad-hoc promotee and time to time separate orders were issued extending the period. However, no artificial break was given and the service was in continuation and the petitioner is still holing the post of Nayab Tehsildar.

The petitioner has submitted that since there is a clear vacancy of Nayab Tehsildar and therefore, he is entitled for regular promotion in accordance with the rule as a reserved category candidate.

The statement of the petitioner is that he is already working on the post of Nayab Tehsildar without any artificial break in pursuance of the ad hoc promotion given to the petitioner, which has been extended from time to time. The petitioner has also referred rule 5 (4) of U.P. Subordinate Revenue Executive Service (Nayab Tehsildar) Rules, 1944, which provides as under:-

"5.(iv) By promotion from amongst such Collection Amins who have passed at least the intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an examination recognized by the U.P. Government as equivalent thereto."

According to the case of the petitioner, the post of Collection Amin is a feeding cadre for the promotion for the post of Nayab Tehsildar and therefore, he clearly falls under the zone of consideration for the post of Nayab Tehsildar and number of vacancies of Nayab Tehsildars are available at present.

Liberty is given to the petitioner to file representation stating his grievances within a period of ten days from the filling of the certified copy of the order.

Admittedly the petitioner is already working on ad hoc basis on the post of Nayab Tehsildar, therefore, the writ petition is disposed of at the admission stage directing the respondent no.3 to consider the claim of the petitioner in accordance with the rules framed under U.P. Subordinate Revenue Executive Service (Nayab Tehsildar) Rules, 1944 within a period of four months.

Till the representation is disposed of, the petitioner shall continue on the said post and the same shall be subject to the final disposal of the representation of the petitioner.

Subject to the aforesaid observations, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

14.02.2006
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